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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,767	12/09/2003	John Frederick Porter	D1815-00060	4269

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EXAMINER

RUDDOCK, ULA CORINNA

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 06/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/731,767

Applicant(s)

PORTER, JOHN FREDERICK

Examiner

Ula C. Ruddock

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/25/04, 7/9/04, 8/11/04, 4/11/05
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-50 of copending Application No. 10/731767.

Although the conflicting claims are not identical, they are not patentably distinct from each other because they are obvious variants over one another.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to

a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-7, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cordell (US 6,274,520) in view of Martz (US 6,071,834) and Brunka et al. (US 5,733,824). Cordell discloses a waterproof fabric comprising a five-ply laminate. One layer comprising a batting (i.e. nonwoven) made from rayon or polyester fibers, and mixtures thereof, wherein the fibers are punched into a nonwoven polyester scrim (col 3, ln 45-51). The layer next to the scrim layer can be a breathable film (col 3, ln 52-56). Another layer that is contiguous to the third layer can be identical in composition to the batting layer (nonwoven comprising rayon and polyester fibers, and mixtures thereof (col 4, ln 7-8 and ln 30-33). The layers are laminated together to each other quickly by ultrasonic energy to form an integral waterproof, breathable fabric (col 4, ln 16-17). Cordell discloses the claimed invention except for the teaching that the scrim layer is coated and that the film is a polyurethane.

Martz (US 6,071,834) discloses a breathable membrane comprising a film of breathable material reinforced by a matrix of filaments arranged in the form of a square grid disposed on a surface of the film (col 7, ln 1-5). The film may be constructed of a water vapor permeable polyurethane (col 7, ln 26-28). The filaments may be a polyester scrim col 7, ln 53-57). A nonwoven layer of polyester fibers may be secured to the grid (col 9, ln 66-67 to col 10, ln 1-4).

Brunka et al. (US 5,733,824) disclose hand-tearable barrier laminates that include a reinforcing layer (abstract). The reinforcing layer can be a scrim made of polyester or rayon or

combinations thereof (col 3, ln 56-59). PVC coating is applied and saturates the web (col 4, ln 14-31). Fire-resistant additives are added to the laminate (col 2, ln 19-20).

It would have been obvious to one having ordinary skill in the art to have used the polyurethane film of Martz in the waterproof fabric of Cordell, motivated by the desire to create a fabric having increased water vapor permeability. It also would have been obvious to have used the PVC coating and fire resistant additives of Brunka et al. in the fabric of Cordell, motivated by the desire to create a fabric having increased strength, water resistance, tear properties, weatherability, and fire resistance.

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cordell (US 6,274,520) in view of Martz (US 6,071,834) and Brunka et al. (US 5,733,824), as applied to claim 1 above, and further in view of Wevers et al. (US 2005/0106965). Cordell, Martz, and Brunka et al. disclose the claimed invention except for the teaching that the nonwoven material specifically comprises polyethylene terephthalate.

Wevers et al. (US 2005/0106965) disclose multilayer structures useful as water-impermeable clothes, tents, and covers comprising a fabric and a polymeric layer (abstract). The fabric comprises polyester fibers [0017]. The specific polyester fibers can be polyethylene terephthalate ([0228]. It would have been obvious to have used the PET fibers of Wevers et al. as the polyester fibers in the fabric of Cordell, Martz, and Brunka et al., motivated by the desire to create a fabric having the desired associated properties of polyethylene terephthalate.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C Ruddock whose telephone number is 571-272-1481. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

UCR *UCR*

Ula Ruddock
Ula C. Ruddock
Primary Examiner
Tech Center 1700